IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 353 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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FAG BEARING INDIA LTD.

Versus

GUJARAT OIL & INDUSTRIES LTD.

Appearance:

1. COMPANY PETITION No. 353 of 1999

MR NM KAPADIA for Petitioner No. 1

MR BN KESHWANI for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 13/09/2001

ORAL JUDGEMENT

By this petition under Sections 433(e), 434(a) and 439(i)(b) of the Companies Act, 1956, the petitioning creditor prays for winding up of the respondent-company as the responde-company is unable to pay its debts.

2 The respondent-company is having its registered office at Ankleshwar and works at Vadodara; that the respondent-company is indebted to the petitioner for a sum of Rs.32,62,400/- as on 30.9.1999; that during the course of the business the petitioner advanced inter-corporate loan to the respondent-company in the sum of Rs.25 lakhs and after adjusting the amount paid by the respondent-company from time to time, adding interest at the rate of 26% on the unpaid amount, the amount payable to the petitioner - company by the respondent-company comes to Rs.32,62,400/-. The say of the petitioner further is that the rate of interest was later on revised to 30%. As the respondent-company failed to pay the dues, the petitioner-company called upon the respondent-company by a statutory notice dated 16.11.1999 to pay up the outstanding amount but of no avail. It is stated that after statutory notice and filing of complaints before Chief Judicial Magistrate at Vadodara the respondent-company has made payments for the small amount towards payment of ICD and interest accrued thereon; that the petitioner has lost faith in the respondent-company and the respondent-company is not making the payment of the amount due to the petitioner and that the respondent-company has failed to discharge the dues payable to the petitioner and therefore the present petition since there is no alternative but to direct the winding up of the respondent-company under the provisions of the Companies Act, 1956.

3 After filing of the petition notice was served to the respondent-company. Respondent appeared and filed reply. After hearing the parties the petition was admitted and public advertisement was ordered to be published in the newspapers and the petition has been advertised in newspapers.

3 Mr Keshwani, learned counsel for the respondent, has fairly stated that the cheques mentioned in paragraph 6 (e) of the petition have not been issued by the respondent has not been denied. It is suggested from paragraphs 6 (e) that as many as five cheques have been issued by the respondent-company to the petitioner. All these cheques admittedly returned dishonoured but subsequently the respondent-company is stated to have made payment of Rs.10,85,000/- before filing of the petition and after filing of this petition further payment of Rs.4,15,000/- has been made by the respondent-company. In all, the respondent-company out of total dues, is stated to have paid Rs.15 lakhs. Thus, the outstanding amount of Rs.10 lakhs and the interest is

still payable by the respondent-company.

4 It is suggested from the record that the respondent-company is unable to pay the outstanding debt amounting to Rs.10 lakhs and more payable to the petitioner-company. The reply filed by the respondent does not suggest any dispute to the amount payable by the respondent-company to the petitioner. Under the circumstances, the respondent-company being unable to pay the debt to the petitioner is liable to be wound up and the petition therefore deserves to be granted requiring the respondent-company to be wound up.

5 In view of the above, the respondent-company Gujarat Oil and Industries Limited, having its registered office at Plot No.323/324, GIDC Industrial Estate, Panoli, Ankleshwar, is ordered to be wound up. The Official Liquidator attached to this Court is appointed as Official Liquidator who will take the possession of all the properties of the respondent-company with all powers under the Companies Act, 1956. The petition is disposed of accordingly.

(N.G.Nandi, J.)
(mohd)